1. Petition dated 20-1-'11, from Mr. A. Sankariah, Retired Dewan Peishkar, Cochin.
2. Petition dated 20-5-'86, from Nilakantan Nilakantan and 19 other inhabitants of the Alangad taluk.
3. Petition from Kanaku Tampi Chempakaraman Raman and 67 other inhabitants of the Eraniel taluk.
4. Petition dated 22-2-'11, from K. Kalliani Amma, wife of Mr. Ravi Varma, Coil Tampuran of Changanacheri.
5. Petition from Kanaku Tampi Chempakaraman Easwaran of Colachel and 48 others.
6. Petition from Kochappa Karthavu and 2 other Samanthas of Meenachil.
7. Petition from Govinda Panickar and 50 other inhabitants of the Parur taluk.
8. Petition from Mr. A. R. Pillai and 4 other Travancoreans residing in England.

THE MARUMAKKATHAYAM BILL.

Mr. Ananda Row.—Sir, at the last meeting of the Council, I sought permission to introduce a Bill relating to the marriage, succession and family management prevailing among certain classes of Marumakkathayees, *viz.*, the Samanthas and Nairs, and permission was granted to me. With your leave, I beg to introduce the Bill itself at the Council to-day. The Bill, with the Statement of Objects and Reasons, has been duly published in the Gazette, and the time prescribed by the Rules has also elapsed. I beg to move therefore that, under Rule 33 of the Council Rules, the principle of this Bill be affirmed.

Seconded by Mr. Vieyra.

Mr. P. Kesava Pillai.—Sir, in discussing the principle of the Bill now before the Council, I divide it into two portions, one, which does not interfere with the constitution of the existing Tarwads and the distribution of proprietory rights and interests therein, and another, which does involve such interference. The first part in my division comprises the provisions relating to marriage, divorce, maintenance, and inheritance, testamentary and intestate. The Chapter relating to the rights and duties of the Karanavan and the Seshakars also, I think, comes within this part. I see nothing objectionable in principle as regards this portion of the Bill.

The second portion consists of the definitions of "*Tarwad*" and "*Karanavan*" and the provisions relating to partition. I hope that it has struck you, in reading through the Bill, that the provision relating to partition and the definitions of "Tarwad" and "Karanavan" contained therein, are based upon the assumption that the property of a Tarwad is owned by all the members thereof as tenants-in-common, and the Karanavan is the appointed manager thereof. Now, the first thing I have to say by way of objection to the above mentioned definitions and provisions is that this view of the Marumakkathayam system, which forms their basis, is opposed to the inference arising from what has all along been the rules of Marumakkathayam law, defining the rights of the Karanavan and the Seshakars in relation to Tarwad property, that the correct view deduceable from the authorities is that the properties of a Tarwad are held exclusively and as a matter of legal right by the Karanavan, the Seshakars having only beneficial interests therein, and that, in this view, the definitions are inappropriate and the partition provisions out of place in the Marumakkathayam Bill. I beg your permission to place before the Council the facts and considerations that have led me to the conclusions given above.

Of the rights of the Karanavan and the Seshakars in relation to ancestral properties, the primary ones are laid down as follows by the decisions of our High Court:—(1) The Karanavan of a Tarwad has the right to the exclusive possession of all the immovable and the movable properties of the Tarwad; (2) he has absolute

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power of disposal over the movables and is not accountable to the other members for the Tarwad income; (3) except for purposes of permanent alienations of immovable property, the Karanavan represents the Tarwad in all transactions with the outside world; and (4) the junior members have the right to residence and maintenance in the Tarwad house, on condition of their submitting to the Karanavan's orders, to protect the immovable properties of the Tarwad, including accretions made to it by the Karanavan, from improper alienations, and to succeed to the Karanavanship in due order. These points are so definitely settled and so well understood that, perhaps, it is not necessary to quote any authority. I would however refer to XVIII T. L. R., page 31, and XXI. T. L. R., page 239, as recent cases in which the questions have been discussed at length. I would, in this connection, also state that the rules laid down by the Madras High Court on these points are, except in one particular, substantially the same as those laid down by our High Court (20 Madras, page 141.) Turning now to the secondary rights, we have the following rules on the subject:—(1) The junior members have the right to recover, on behalf of the Tarwad, property improperly alienated by the Karanavan; (2) they have the right in exceptional cases to sue for rents due in respect of Tarwad property; (3) they have the right to incur debts to meet urgent needs and charge the Tarwad with the same; (4) their names are not liable to be removed from the patta for Tarwad property when they have found a place there along with that of the Karanavan; and (5) they have the right to sue for the removal of a Karanavan who persists in a course of conduct injurious to their interests. I hope that I am correct in these statements.

Now I take it that no arguments are needed to convince you that any theory of the Marumakkathayam system must correctly sum up the above rights before it can claim our acceptance, and that no theory which is unable to account for the existence of any one of these primary rights can be treated as correct. But if we examine the theory of tenancy-in-common adopted in the Bill, it will be found to fail on almost every point. If the members of a Tarwad hold property in common, how are we to account for the Karanavan's exclusive right to hold such properties, for his absolute power of disposal over the Tarwad movables and income, and for his extensive powers to represent the estate? How again, on the basis of this theory, are we to account for the conditions and limitations to which the rights of the Seshakars in the Tarwad are subjected?

The Marumakkathayam Committee, in Para 104 of their Report, have advanced another theory of Marumakkathayam property. They say that all the members of the family hold the property as co-owners, with rights of survivorship, under the management of the senior male of the whole corporation, who is called the Karanavan. Though this theory does not directly come up for our consideration now, I would say a few words regarding it, because it is the theory of a Committee that investigated the subject, and because its exclusion becomes necessary for the acceptance of the view I have stated before. Like the theory of tenancy-in-common, this theory also is unable to account for either the Karanavan's rights of absolute control over the Tarwad income and the power of disposal over movables, or the limitations to the rights of the Seshakars. In Hindu Law, there is joint ownership; but that law divides the members of a family into two classes, those that are entitled to shares and those that are entitled only to maintenance. It is only the first class of members that hold family property jointly, with rights of survivorship. Among such joint owners, there is no distinction between ancestral immovables and movables as regards the Manager's power of alienation. The Manager is also accountable for the family income to his co-sharers, who have a right to demand payment of their share thereof and enforce a partition. The relative position of the Karanavan and the Seshakars is completely different in all these respects. How then can we say that the Karanavan and the Seshakars are co-owners of Tarwad property, with rights of survivorship? The Committee cite XII T. L. R., page 211, at page 210, as an authority. In this case, a Division Bench has no doubt recorded it as their opinion that the Seshakars are the joint owners of the Tarwad property with the Karanavan, and that "the relative position of the Karanavan and the Seshakars of Tarwad bear the "strongest resemblance to the head of an undivided Makkathayam family and his "co-parceners." I have already shown that there is no resemblance between the junior

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members of a Malabar Tarwad and the co-parceners of a Hindu family. If at all, the resemblance is between the junior members and the members of a Hindu family who are not co-parceners but have only a right to maintenance The following account of the case in XII T. L. R., page 211, will further show that the statement of the Division Bench is of no legal validity. In that case, the Karanavan of a Tarwad executed a sale of Tarwad property and put the purchaser in possession thereof. The junior members brought a suit to set aside the sale and got a decree in their favour. They did not, in the first suit, seek to recover the property, because the law as it then stood did not permit them to do so. Some years after the decree, the Karanavan who executed the sale and the Seshakars who got the sale set aside, joined together and brought a second suit to recover the property. This was 12 years after the sale, and the defendant therefore contended that the suit was barred. For the purpose of deciding the question of limitation, the Division Bench, before which the case came on for hearing in appeal, considered it necessary to get the opinion of the Full Bench as to whether junior members can recover property improperly alienated by the Karanavan. The Full Bench, in dealing with the reference, tried to sum up the rules relating to the rights of the Karanavan and the Seshakars, and arrived at the following conclusions:—(1) The notion of Tarwad property is that the entire family, whose members, for proprietory purposes, exist as a whole and form one entity, somewhat in the nature of a corporation, is its owner; (2) the Karanavan is the representative of this entity, and the management and control of the Tarwad property is vested in him by law; and (3) the junior members have vested rights and are entitled to be maintained by the Karanavan in the Tarwad house. On the basis of the above conclusions, the question referred to them was answered in the affirmative. The Division Bench, on receipt of the above opinion of the Full Bench, held that the suit was barred and decreed its dismissal. It is in their judgment dismissing the suit as barred, that the Division Bench recorded the opinion relied on by the Committee. But this opinion is one opposed to that of the Full Bench and unnecessary for the final decision of the case. In XV, T. L. R., page 155, another Division Bench has reiterated the view of the Division Bench in XII T. L. R., page 211, but in several subsequent cases in which the High Court discussed the question of the rights of the Karanavan and the Seshakars, they have followed older decisions and affirmed the rules stated therein leaving the statements in XII T. L. R. and XV T. L. R. severely alone. The observation relied on by the Committee is thus not only opposed to the current of prior decisions and the opinion of the Full Bench in the case itself, but the subsequent decisions of the High Court are also opposed to it. I wonder how the Committee ventured to accept this observation as a sole and sufficient authority for basing a view on such an intricate subject as the Marumakkathayam system of ownership.

It may be said that a majority of the witnesses examined by the Committee, by agreeing to partition at one stage or another in the growth of a family, and the majority of the Marumakkathayam Members of the Third and the Fourth Sessions of the Popular Assembly, by presenting petitions praying for a Commission, and the majority of the Members of the last Assembly, by accepting the principle of the Bill now before the Council, have assented and testified to the correctness of one or the other of the two theories criticized above. But a close examination of the facts will show that no such inference is possible. It is no doubt true that a majority of the witnesses agreed in saying that partition may be allowed. But the initial questions put to the witnesses on the subject were such as brought prominently before their minds the necessity and advantage of separation in large Tarwads, consisting of numerous branches, and kept out of their minds the nature of Marumakkathayam ownership. However, the answers given by the witnesses to Question 15 (d) show that they did not assent or testify to the correctness of any theory. For, one set of witnesses said that the shares, for the purposes of partition, should be ascertained on the *per capita* principle, another set, that it should be on the *per stirpes* principle, while a third set wanted the number of shares to be one more than the number of sharers, the additional share to be given to the Karanavan. As regards the Members of the Third and Fourth Sessions of the Popular Assembly, they put the case for partition not on any theoretical basis. They saw that separation of branches was taking place in overgrown families, and that, sooner or later, their Tarwad estates were being broken up and portions given to the separating branches. They also

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saw that the present law, which treated many such separated branches as legally undivided in spite of practical division, involves them in future trouble. They therefore wanted a Commission to enquire, among other things, and ascertain the stage at which separation and allotment of property usually took place. They wanted this information in order to see whether a law might not be passed, giving to the branches of Tarwads that have reached the proper stage for it, the right to get by out and out division a portion of their Tarwad property, and preventing them in future from falling into the undesirable condition of legal unity with practical separation. They however took care to state that the properties of a Tarwad were held by its Karanavan and that this was the essential feature of the Marumakkathayam system. Further, they did not commit themselves to any view as to the principle on which the shares were to be calculated. There then remains the assent given by the Members of the last Assembly to the Bill now introduced into the Council. This also is inconclusive, because there were differences of opinion among the Members as regards the principle on which the shares were to be calculated. Some of the Members moreover wanted the acquisitions made by the Karanavan with the Tarwad income to be treated as his self-acquisition to a certain extent, which could not be, if he was the Manager of a joint family holding property jointly or in common.

In dealing with the theory of joint ownership, we had to light upon the theory of corporate ownership or quasi-corporate ownership of Tarwad property, propounded by the Full Bench in XII T. L. R. This theory also is unable to account for the Karanavan's absolute control over the Tarwad income and his absolute power of disposal over Tarwad movables. It also fails to account for the power which the adult members of the Tarwad have to sell Tarwad properties so as to bind the minors in the family. There remains another theory yet to be noticed. It is the theory that women are the real owners of Tarwad property. In the sense that those who are interested in the property, including the Karanavan, are persons tracing their descent through women, and the estate passes from hand to hand in succession through the female line, this view is correct. But, if it means that the women as individuals have any special rights in their Tarwad property, to the exclusion of the men, it is not correct, except in relation to those families where, by custom, the Karanavanship is vested in the senior female. In ordinary Tarwads, the males always exclude the females from possession of Tarwad property and control over its income. The women in such Tarwads have, as individuals, no more rights than the men, except the rights of their future children to claim maintenance from the Tarwad.

I have dealt with the counter-theories of Marumakkathayam landholding at some length. I shall now proceed to consider the view that the Karanavan is the legal owner of such estates and the Seshakars have only beneficiary or equitable interests therein. Now the first thing I have to point out with regard to this view is that the rights of the Karanavan and of the Seshakars, as well as the conditions and limitations to which the latter's right is subject, which appear so perplexing when viewed in relation to the other theories, at once fall into order and become consistent and intelligible when viewed in relation to this. The Karanavan has the right to the exclusive possession of Tarwad property, because the legal estate therein is vested in him. For the same reason, he has absolute control over the income and power of disposal over movables. The junior members have only limited rights over the family properties, because the customary law has thought fit to interfere with the legal owner's rights only to the extent absolutely needed in the public interests. The junior members' subsidiary rights stated above, such as the right to recover lands improperly alienated by the Karanavan, are intended for the protection of their beneficial interests. But this is not all. During the last one hundred years, the Madras Sadr Court, the Madras High Court and our own High Court have, in several judgments, stated that compulsory partition is opposed to the principles of the Marumakkathayam law, and they have dismissed suits involving claims for a share on that ground. Now, if under the Marumakkathayam system ancestral property is held by all the members, in common or jointly with rights of survivorship, or as a quasi-corporate whole, or by the women as co-owners, I fail to see any meaning in these statements; but, accept the theory of the Karanavan's legal ownership and the Seshakars' beneficial interests, the whole thing becomes perfectly clear. There can be no compulsory partition of Marumakkathayam

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property, because it is held by the Karanavan as legal owner, and there is no other who stands in the relation of co-owner to him. Then again, it has been a characteristic feature of the Marumakkathayam system that it presumes that the acquisition of a junior member is his own, unlike the Hindu joint family system which presumes it to be joint acquisition if a nucleus of family property is shown. If ownership of one of the four kinds adverted to above was what exist here, this requires explanation; but, accepting the last theory, this also becomes quite intelligible. The junior members are not co-owners of Tarwad property, and therefore their acquisitions are their own. Further, Ward and Conner, in their Memoirs of the Travancore and Cochin Survey, writing about the Nairs, say that ancestral properties among them passes undivided from uncle to nephew by inheritance. Of the writers whose opinions are appended to the Malabar Marriage Commission Report, two distinctly speak to the same effect. One of them is Mr. Warden and another a German Missionary. How could the property inherited by the uncle descend undivided after his death to the nephew, unless the uncle himself exclusively held it? The last piece of evidence to which I would refer in this connection is the Circular Letter issued by the Provincial Court of Tellicherry, in which reference is made to the immemorial custom of Malabar, under which ancestral property vested in the senior male in trust for the maintenance of the members of the family. This Circular was issued in 1810 and was issued after taking evidence on the point. The Circular is quoted in Wigram and Moore's Malabar Law. I believe that the circumstances I have stated are such as clearly show that ancestral property under the Marumakkathayam system is held exclusively by the Karanavan and transmitted by succession to the next holder, though each holder for the time being takes it subject to trusts. In the rule of the Marumakkathayam law in force even to-day, that nephews have the right to succeed to the Karanavanship in due order, we have a disguised admission of this. For, what is the difference in reality between the nephew's rights to succeed to the estates of the Tarwad and his right to succeed to the Karnavanship which gives him the estates? I think that I have said enough to show that the definitions of "Tarwad" and "Karanavan" are based upon an incorrect view of the Marumakkathayam system. It follows that the partition provisions also stand on the same footing.

I have finished one aspect of the subject. But to the observations made above, the reformers may reply as follows:— No doubt the inference deduceable from the existing rules of the Marumakkathayam law is that the Karanavan holds the Tarwad property as a matter of right, and probably they are in accordance with the view that the legal ownership is vested in him. But, the observations to the contrary contained in XII T. L. R. and other cases have unsettled the law. The Bill is intended to bring about a settlement. Its authors, in framing the definitions objected to and in allowing partition, have looked forward, and not backward, adopted views, not so much in accordance with what has been in the past, but with what ought to be in the future. If any of the existing rules are not in accordance with these views, the rules have simply to be altered. To the answer, which amounts virtually to admitting that the portion of the Bill I object to is intended to disturb existing arrangements, I have to say that such action is neither necessary, nor advantageous, nor conformable to the accepted principles of legislation. To take up the question of necessity first, it must be admitted that the change is not needed in the interests of the Karanavans. I say, it is not necessary in the real interests of the Seshakars also, because they get under the present system all that they are entitled to ask at the hands of the law and of the State, namely, residence and maintenance if and when they are not able to work and maintain themselves. If they want more, there can be nothing wrong in the law leaving them to find it by their own exertion or to get their wants supplied by others out of natural affection. If it is asked, why should there be any inequality between the Karanavan and the Seshakars, the answer is that inequalities exist and must exist everywhere. Secondly, as regards advantage, it is undoubtedly true that the Marumakkathayam system has a very weak point in it, in so far as it places the head of a family in a position in which his interest in his Tarwad and his Seshakars conflicts with his interest in his wife and children. But in the case of ordinary men, such conflict leads to trouble only when the question as to who should profit by his labour and earnings crops up. The law of the land, custom and public opinion decide for them the

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course of conduct they should adopt with regard to the property they have inherited from their uncles. Be this as it may, the system has other advantages to compensate for this. By vesting the properties in the Karanavan, giving him control over the income and charging him with the liability to maintain others if they remain in the family, it supplies the Karanavans with a strong motive to set the grown-up males in independent walks of life, to give the women in marriage to husbands who will support them, as well as to make as large a profit as possible from the properties. By giving the male Seshakars of the family a choice between a life of dependence at the expense of the Tarwad and a life of independence by self-exertion, it induces the energetic and free-spirited portion of the community to work. By giving the Karanavan, who will generally be a man of age and experience not likely to err on the side of extravagance, the power to regulate the expenses of the non-earning and dependent portion of the community, it minimises their expenses. Account it as you may, the results do not show that the system is injurious to the bringing up and the education of children. Individual instances may be pointed out to contradict these truths, but the tendency of economic motives can never be correctly ascertained from individual instances. They must be known and tested by observation of the conduct of large masses. Let us now see what the condition of things would be, if the constitution of the existing Tarwads is altered in the manner now proposed, by making the Karanavan a mere honorary manager and the Seshakars joint possessors of the Tarwad property. To begin with, all the advantages of the system will be lost and its weakness alone will remain. In an undivided Hindu Makkathayam family, the women are not co-owners with the men, and the sons are not co-owners with their grandfather during the life time of the father. In spite of the comparative simplicity of the system, the undivided Hindu Makkathayam family has turned out a failure. If this is so, what better fate can you expect for the complex Marumakkathayam family of a new type, which the Bill proposes to bring into existence, with men, women and children as tenants-in-common, of whom one will have no more authority in family matters than the other? In a Tarwad, under its present form, the authority of the Karanavan and the position of subordination assigned by law to the junior members ordinarily secures cohesion and order. Pull down the Karanavan from his position, as it is proposed to do, and you make every Tarwad a scene of incessant struggle, confusion and discord.

It may be said that we have made provision under which large Tarwads can easily divide into Thavazhees. This itself is not an unmixed advantage. But what is the good of providing for division in large families, when in the small ones too there will be the same struggle, confusion and disorder? Division as now proposed will not have the effect of alleviating either the evils that now exist in Tarwads or the additional ones which the alteration in its structure now proposed will bring about. Its only effect will be to spread the evil over a wider area. When it comes to that, we will ask for the right of compulsory individual partition, which is indeed our goal, say the Marumakkathayam reformers. It is of course assumed in this answer that individual partition brought about in the way they propose will be an advantage. To this, I would say that, after making a suitable and stable basis for a new family system, the Tarwad may be allowed to break up; but, to take any action, with individual partition as the goal, before that, would be disastrous to the Nair community. For, its effect will be to disperse Nair society into atoms and leave each individual with no permanent associations with another. Those who advocate individual partition believe that there can be no harm in this, because they assume that the usual struggle for existence among men is between individuals. But, as pointed out by a recent writer on Political Economy, this assumption is a mistake. The struggle is between families, and the survival is not of the fittest individuals but of the individuals that form the fittest families. You may say that the Marumakkathayam family is not one fitted for survival. This I contend is incorrect, as shown by past results. However, is it not something better than having no family bonds at all? Individual partition will further have the effect of subdividing agricultural holdings, of breaking up the agricultural organisation of the middle class Nairs and depriving them of their profit, and of throwing open a fresh field for litigation in these days of increasing law suits. These considerations are enough to induce us to set our face resolutely against individual partition for at least many years to come. But it is clear that, if the alteration in the structure of the

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family now proposed is admitted, the community will not be able to get on without individual partition for long. This, I think, is sufficient to show that the alteration in the structure of Tarwads now proposed will not be advantageous to adopt.

But the greatest objection to the proposed change is that it is not in conformity with the accepted principles of legislation. I shall not, on this head, make any remarks of my own, but shall rest satisfied with quoting a passage, not from conservative writers, but from the founder of the modern school of law reformers. Bentham, in his *Theory of Legislation*, after discussing the objects to be aimed at by the law and arriving at the conclusion that security and equality are the two chief objects, and deciding that, when there is a conflict between the two, equality must unhesitatingly give way to security, proceeds as follows :—"In consulting the grand "principle of security, what ought the legislator to decree respecting the mass of "property already existing? He ought to maintain the distribution as it is actually "established. It is this which under the name of justice is regarded as his first "duty. This is a general and simple rule which applies itself to all states, which adapts "itself to all places, even those of the most opposite character." I fear that the definitions of "Tarwad" and "Karanavan", which are in reality enacting provisions, and the provisions relating to "Partition", involve a change in the existing distribution of proprietory rights and interests among the members of the Tarwads, and therefore go directly against what Bentham has said in this passage.

For the reasons stated above, I am unable to accept the principle of the Bill as regards this portion of it. As regards the rest, I affirm the principle of the Bill.

Mr. Sri Narayanan Tampi.—Sir, now that the Bill is formally introduced, I beg permission to make a few observations, and those briefly. It is an essentially important social question affecting several communities, and trenching perhaps on the religious sentiments of some of them. It is not a simple measure, as it may at first appear. The investigations that formed the basis of the Bill have been confined only to some of the communities whose social liberties and personal properties are to be restricted or regulated by the proposed measure. As it has, however, come before the Council, I have just to say that, considering the sanctity and magnitude of the subject, the fullest and widest latitude of individual light should and ought to be shed on its consideration.

At the time of the introduction of the late Mr. P. Thanu Pillai's Marumakkathayam Marriage Bill, I expressed the opinion that it was highly necessary in the interests of the community. I also presided at the Trivandrum Public Meeting held in support of that Bill. My fourteen years' experience since then has only strengthened my views, and a measure to accord legislative recognition to marriages among Nairs has my cordial approval. The provisions in the present Bill relating to maintenance &c., of wife and children, and the amendment of the Wills Regulation follow the general wish. The Tarwad system too, may well be taken up now for legislative treatment as far as practicable.

As regards partition, however, the principle involved seems to be one to which I cannot accord my assent.

The *pros* and *cons* of the marriage question have undergone an almost thorough consideration at the hands of the public. The question of partition is new, and the issues involved are too intricate and technical for a lay man's solution. I gather that a European jurist who once graced the High Court of Travancore and made the Marumakkathayam Law a special study, has expressed himself in favour of the Tarwad system as suited to an agrarian population. I would like that expert opinion on the economic aspect of the question be secured before allowing the dismemberment of an institution solidly founded on and sanctified by the observance of ages. The social and legal phases of the seemingly tentative break-up proposed in the shape of Thavazhee partition present knotty questions of vested rights, fiduciary relations and obligations etc., which may advantageously form subjects of enquiry as solemnly and deliberately as the question of Divorce is being dealt with in England by eminent experts. The Honorable Mr. Justice Sankaran Nair, who presided lately at a conference of the Koraleeya Nair Samajam, was of the opinion that Tarwad property really belongs to females. In this view of the case, I entertain very grave doubts as

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to whether our handling of the subject at this stage would not amount to an arbitrary invasion of women's rights. Shall we be justified in setting aside a doctrine of law which in effect has been honoured and revered by the community for centuries past?

Authoritative and weighty pronouncements, history and tradition, custom and personal experience, point to the woman being the paramount factor in the Marumakkathayam system. Until she can be taken under the aegis of a convincingly protecting new system, the legislature must stay its hand against aggression on her subsisting rights. On these grounds, I support the principles of the Bill, except with regard to partition.

Mr. Easwara Pillai.—Sir, the Bill now before the Council deals with certain subjects which are admittedly of vital importance to the Nair community, *viz*, marriage and dissolution, maintenance and guardianship, intestate and testamentary succession, the duties and powers of Karanavans and Anandaravars, and lastly, partition. Its object appears to be two-fold. It aims chiefly at giving a turn to the existing Marumakkathayam law, so as to benefit certain parties not included within its pale. It also aims, as a subordinate object, to define more exactly the rights and duties of the parties originally included within it, and, after dividing them into groups, to invest them with certain new and important rights. All the subjects dealt with in the Bill, except the last two, come under the former class; and the propriety therefore of calling it the "Marumakkathayam Regulation" is open to question. *While the provisions of the Bill in regard to the first four subjects benefit the parties hitherto excluded, the provision for Thavazhee partition introduced into it, does not seem calculated to benefit either of the parties, and not only fails entirely as a remedial measure against existing evils, or as a stimulus to industry and self-help, as it is represented to be, but also leads to positive harm.* I am therefore not in favour of such a provision being introduced into the Bill, and I shall briefly summarise my reasons for the same.

The Karanavan of a Marumakathayam Tarwad is, rightly or wrongly, represented as an evil genius, the source of all the evils and disorders alleged to disfigure the Nair Tarwad. By having recourse to Thavazhee partition, we are but multiplying the number of Karanavans, and thereby giving wider scope for the operation and propagation of the evils complained of. The remedy thus turns out to be worse than the disease. As soon as the mantle of Karanavan falls on the shoulders of an individual, however good he might have been as Anandaravan, he becomes transformed by some mysterious process, into a sower of discord and a breeder of discontent. The Anandaravars too, who form the dissentient elements in the main Tarwad, do not undergo any change, at least, for the better, by being removed from the jurisdiction of the main Karanavan and placed under the control of the individual who has been suddenly and prematurely raised to that dignity. Their position and rights, as regards ownership and possession, remain quite unaltered. *It is said that the closer relationship subsisting between the two parties in the divided Tarwad may tend to improve matters. But it must be remembered that it is not the remoteness of the relationship that is really at the bottom of the revolt and discontent that are said to exist in Nair Tarwads.* For, if it were so, the Marumakkathayam system would have collapsed not long after its inception, as this one condition must have invariably been present in all the stages of its existence. But it is admitted on all hands that the system has worked well enough for hundreds of years; and that it is only in recent times, that discord and dissentions have begun to mar the harmony of Tarwad life, for the causes of which, we have to look in other directions. A love of individual liberty, a feeling of self-interest and a desire for personal comfort, have, with the spread of western education, begun to possess and influence the hearts of individuals, demanding gratification. But Thavazhee partition, so far as I am aware, does not at all provide any scope or facility for such gratification; and so long as this is not done, matters in the branch Tarwad must inevitably be in as bad a condition as they are said to be in the main Tarwad.

In the next place, Thavazhee partition places the Karanavan in a more favourable position for absolute sway, and affords greater facilities for him to encumber and alienate the Tarwad property. For, whereas in the main Tarwad, he has to

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face the opposition or secure the acquiescence of a large number of individuals of diverse views and tendencies, in the branch Tarwad, where the individuals are but few and more liable to be swayed by him, opposition must certainly be feebler and acquiescence comparatively easier.

It must also be remembered that, by Thavazhee partition, the Karanavanship in most cases is likely to devolve on junior and comparatively younger members, who may not have the experience, judgment and capacity necessary for good management. When, even with these qualities, a Karanavan is not free from the general bad repute attached to his position, without these, there is no doubt that his management must be productive of more serious evils. All this may perhaps be regarded as remote contingencies, or as imaginary evils, or as unfounded apprehensions. But numberless instances of alienations and encumbrances of Tarwad property, after Thavazhee partition has been effected, have come within my own observation, and have more than proved that the apprehensions are in no way unfounded. The Marumakkathayam Committee itself admits this in its Report (vide Para 113). I should think it safer to base our conclusions on actual facts than upon mere theories. There are, it is true, a few instances of divided branches having been improved. Where such branches have thriven, it is due, so far as I have been able to observe, not to the mere fact of the division being effected, but owing invariably to the self-acquisition of some one individual member, or the gift of a father to his children, being added to the Tarwad property.

I am also strongly of opinion that the granting of the right to demand Thavazhee partition will have the effect of providing fresh fields and facilities for litigation and of bringing about the ruin of many a Tarwad. We are now ostensibly undertaking this piece of legislation to check, if not to put a stop to, the ruinous litigation said to be going on in Nair Tarwads. But I fear that, by this step, we are preparing the ground for the growth of further litigation, it may be, of a different kind, but equally ruinous. *The first thing that the possessor of a new weapon will be tempted to do is to try the edge of it.* With the consciousness of having the law at its back, a people litigiously inclined is not likely to waive even a tittle of the right given to it by law, nor to tamely abide by the division or distribution made by the Karanavan and the other members. It will not be always a mere matter of asking and giving. Disputes as to the productive capacity of the properties, their market value, the buildings on them, and the moveables of the Tarwad, will invariably crop up in this connection, and no decision, except that of a Court of law, will satisfy the parties concerned. In legislating for posterity, I am of opinion that we should not leave them a legacy of litigation and the evils which are proverbially its own.

I am also of opinion that Thavazhee partition is inconsistent with the principles underlying the Marumakkathayam system. The units that go to make up a Marumakkathayam Tarwad are the individuals, and not the groups called Thavazhees. Whatever rights such groups possess are derived from the individuals which compose such groups. But no individual member has any right to demand partition. It is therefore not right, in my humble opinion, to invest such groups with new rights by legislation, and thus make them the basis of partition. Legislation affecting a custom or an institution should, as far as possible, conform to its underlying principle, without doing violence to its essential character. In cases of Thavazhee partitions now being effected in Nair Tarwads, it must be remembered that they are done with the consent of every unit that has a right to be consulted. There is at least this justification for it, though the result appears to be, as already observed, far from encouraging.

One of the strongest arguments brought forward by the advocates of Thavazhee partition is that it supplies a strong stimulus to exertion, enterprise and industrial pursuits on the part of the junior members. In the undivided Tarwad, it is said, the juniors "feel secure of the means of subsistence and so lead a life of "idleness and indolence". In regard to this, I have a few observations to make. In the first place, the indolence, idleness and other vices attributed to the junior members, are not due to the fact of their forming units of an undivided Tarwad or of their being maintained at its expense. That this is not the case, is proved by the numberless instances of junior members having actively

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exerted themselves and made large acquisitions by their own industry and enterprise, without any initial capital being supplied from the Tarwad. In fact, if we enquire into the origin of the rich Tarwads now existing, we shall find that their present condition is, in most cases, due to the large accessions made to them by the industry of some one or other of the junior members of the Tarwad. There are, I am aware, a good number of Nair Tarwads in rural Travancore, where the junior members heartily co-operate with the Karanavan in improving the property and otherwise promoting the welfare of the Tarwad. It has become a common, but not a commendable, practice with us now-a-days, to attribute every evil that flesh is heir to, to the Marumakkathayam system or to the much abused Karanavan, and thus save ourselves the trouble of tracing existing evils to their real causes. There are, it must be confessed with some sense of shame, a good many defects and vices in our national character, due to causes that have long been in operation; and, aversion to manual labour which is at the root of the indolence and the lack of a spirit of enterprise on our part, is the curse of our community, and is responsible for a good many other evils. Mr. Padmanabha Menon rightly says "they are averse to manual labour of any kind, they think it degrading, a false "sense of dignity deters them from enterprises that will in the long run advance "them as a nation". How else can we account for the eagerness with which our young men, in spite of their being fed in the Tarwad, rush into the portals of Government Service for admission? How, under such circumstances, compulsory Thavazhee partition can make them industrious, is not quite clear. Are the junior members not to be fed in the branch Tarwads? Do they get their individual shares there? Are they supplied with any capital? No. By what stretch of imagination then, can Thavazhee partition be said to promote industry and enterprise on the part of junior members? The fact is that the advantages of individual partition have, by some process, been transferred to Thavazhee partition, as if a single individual and a group of individuals are one and the same. But no amount of logic can, I think, reduce a group to an individual. If a smaller group can be regarded as an individual, as is done here, why not the larger one too? The sooner the defects in our national character are removed, the better for our own community. But the remedy should be one that would strike at the root of the evils. Thavazhee partition is but a poor prescription for the same. To my mind, education which not merely "trims the wick of the intellect but also lights the lamp of the heart", or in other words, sound education alone, can generate in us a sense of responsibility and duty, a spirit of enterprise, a proper appreciation of the value and dignity of labour, and a habit of self-reliance; and therefore the partition that is most wanted, and which would be most effective, is to set apart a portion of the Tarwad property for this all important purpose.

It is also argued that, since Thavazhee partitions are now frequent, what harm is there in making them compulsory by law? I am aware that such partitions do take place here and there. But they are effected with the consent of all the members, who are prepared to take the full consequences of the course of action they deliberately adopt. This, I think, will not justify our forcing upon them a measure in which the party demanding partition stands in adverse relation to the rest of the Tarwad and looks only to its own interests.

In the Marumakkathayam Commitee's Report, I find it stated that 88 % of the witnesses examined were in favour of Thavazhee partition. This number includes advocates of individual partition, supporters of Thavazhee partition and those, including myself, who are in favour of maintenance arrangements by allotment of properties. It is observed that a good number of the advocates of individual partition have cast in their lot with the supporters of Thavazhee partition, not because of the advantages of the latter, but because the former has been excluded from the scope of the Committee's inquiry. If we exclude these, and also those in favour of maintenance arrangements, the number in favour of absolute Thavazhee partition must dwindle down considerably. Even granting, for argument's sake, that there is such a weight of opinion in favour of Thavazhee partition, there is not the least necessity for the legislature to step in. For, I am of opinion that such a strong natural tendency, if left to itself, will shape and adapt itself to our changing environments and varying conditions of life, better than any human legislation can, in as much as Nature always chooses and moves along the line of least resistance.

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Where a desired change comes spontaneously from within, especially in matters affecting our social or domestic life, the attitude of the legislator ought to be one of passive encouragement, rather than of active interference. Besides, we are not legislating solely for the witnesses examined. Behind them remain, in blissful ignorance of this reform movement, the vast masses whose evidence has not, and perhaps could not have, been taken, but who have nevertheless to be reckoned with. Conservative to the core, they are mostly averse to changes of the kind. There also remains the female section of the population, the real owners of the Tarwad property, whose views on this important question affecting their welfare have not yet been sounded. In regard to these two classes, we would be acting on the somewhat dangerous principle that "silence implies consent".

It is also urged that Thavazhee partition affords relief to the Karanavan by circumscribing the sphere of his control. It may be. But, apparently, it is not *he* that stands in need of relief. *He*, it would seem, has forfeited all right to our sympathy. It is the suffering *Anandaravan* that demands our care. But what relief *he* can expect by being removed from the comparative freedom he enjoys under the Tarwad Karanavan, and being placed in the tighter grip of the Thavazhee Karanavan, I am at a loss to understand.

I have here given expression to my sincere opinion, nay, conviction, in regard to this important question of compulsory partition in Nair Tarwads, based upon actual observation and experience. As the junior member of a respectable Nair Tarwad, who has been brought up there and educated at its expense, who has laboured for, and contributed his mite to, its welfare, and who has, for the last 15 years or more, been associated with the Karanavan in its management, I have had ample opportunities of watching the working of the system from different standpoints, and noting its defects and drawbacks. But I am far from claiming any infallibility for my views on that account. That the system is more or less ill-adapted to modern conditions, no one will deny. That it requires modification, every one will admit. But in matters of detail, difference of opinion will and must exist. *The provisions of the Bill in regard to marriage, maintenance, intestate and testamentary succession &c., embody reforms that are highly necessary, desirable and in keeping with the highest judicial pronouncements, and I accord my full support to the Bill so far, reserving to myself, of course, the right to discuss critically the details. But, as to the advisability of enforcing compulsory partition of Tarwad property on the Thavazhee principle, I have very grave doubts; and I regret therefore that I am unable to give my unqualified support to that portion of the Bill.* The provisions bearing on the disposal of self-acquired property cut off the main source of strength and vitality of the Tarwad. If, to this, be added the right to demand Thavazhee partition, the disruption of Nair Tarwads will be complete. This, I believe, is not the object of the Bill. I am aware that, in some respects, I am going against the opinion of the learned and worthy Members of the Marumakkathayam Committee, whose patient and untiring labours and researches have thrown a flood of light upon the subject and exposed many of its flaws and defects. The sincere thanks of the Nair community are therefore due to the Members of the Committee, and especially to the gifted, venerable, and experienced President, for whom personally I have the greatest respect and admiration.

Mr. Madhavan Tampi.—Sir, in discussing the principle of the Bill, I beg to submit that I agree with the opinion of the previous speaker. *The Bill contains more than one principle, and I agree to the principles generally, except with regard to partition.*

We have, in this Council, practically to settle the questions that were under the consideration of the Marumakkathayam Committee. It must be admitted that, at every stage of adjudication, perusal of the records of the case under consideration is a safe-guard against ill-weighed or superficial judgments. Many or most of us have not had the advantage of examining the evidence collected by the Committee. The papers have not, at any rate, been laid before the Council, and the question before us, consequently, has to be discussed on the broad grounds of principle and expediency.

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The proposal for partition is tantamount to pulling out the key-stone of the Marumakkathayam system. The Nambudris and the Nairs constituted, of old, the hierarchy and the aristocracy of Kerala, and, though following two different forms of marital law, they have chosen to adopt and follow the same system of property holding and management. If tradition and antiquarian researches bearing on the colonization of Malabar can be trusted, the conclusion follows that the unit family system in Malabar was preferred to the Mitakshara and kindred systems to which the founders of our system were not aliens. Kerala having been a land pre-eminently of Yogams and Sabhas, the principle of impartibility must have been adopted only after due deliberation as to its utility for safe-guarding the solidarity and permanence of the community. The Tarwad property system, corporate, conjoint, or whatever else its character in technical phraseology may be, is not a special feature of Marumakkathayam holdings, but is only part and parcel of a broader based fabric. The system, Sir, is at the same time of remoter antiquity than memory can carry us back. Through ages, ancient, medieval and modern, the system has stood in good stead, to maintain the communities following it in peace and prosperity, notwithstanding their neglect of the money-making pursuits that have become open to them, from time to time, in the expansion of international relations.

It is such a long-standing and deep-rooted system that the present Bill seeks to overthrow. It is considered by several gentlemen of light and leading that the proposal comes rather too suddenly. The idea of legislation on the subject is of recent genesis, and did not find place in the marriage-law movements pioneered by the Hon'ble Mr. Sankaran Nair and the late Mr. Thanu Pillai. Nor did other Nair gentlemen who, in the past, occupied exalted positions in the public service, like Dewan Mr. Nanu Pillai and Justices Messrs. Kunjen Menon, Narayana Pillai and Kunhiraman Nair—all of whom took active interest in movements calculated to advance society—show by their conduct that they considered a partition-legislation necessary to elevate us in the scale of communities. The question prominently came into notice only about the time that the Sri Mulam Popular Assembly saw the light of day. Whether, in the case of an institution of admitted standing and beneficence like the Tarwad system, the controversy of a few years is enough to clearly bring out the good points of the proposed reforms and to give notice to the community to readjust conditions, collocations and contracts, so as to admit of the break-up being accomplished without the incidental dangers of a revolution, is the question to be seriously considered. The wisest and safest course, in my opinion, to remedy whatever evil has been discovered in the present instance, is to allow time to fortify the environments, to see what the natural processes of evolution aided and hastened by the operation of the other portions of the Bill can accomplish.

I have already mentioned that, in the matter of partition, the Marumakkathayees stand on the same footing as the Nambudris. The Nanjanad Vellalas form another community similarly circumstanced. They stand closest to the Nairs in point of marriage, inheritance and property management systems. A Commission similar to the Marumakkathayam Committee appears to have been appointed by the Government, and I learn that the Nanjanad Vellala community has unanimously opposed partition. The non-Nair Marumakkathayees do not come under the purview of the present Bill; and thus you see, Sir, that the examples, so far as they go, are distinctly of a discouraging nature. The trend of modern opinion is in favour of self-centred individual rights. This ideal is indeed glorious, but legislatures have been upholding the impartibility of estates. The principle underlying such legislation is one which ought to receive due recognition, when an attempt is made to break up a long-standing community of landed proprietors. I am not sure if, apart from the interests of the community concerned, the action would not affect the economic future of the State itself. The last point is, however, best looked into by the constituted authorities; but, I refer to the legislative action and policy elsewhere, only in proof of the position I take that impartibilty is not *per se* a ground of national decay or ruin, calling for authoritative interference. Whether the provision for partition may rightly be enacted by the legislature, whether there is any absolute necessity for the proposed form of partition, and whether, in the result, good or evil would preponderate, are the questions to be principally considered on this occasion.

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As regards the first point, I must premise my observations with the remark that I should not be taken to deny the right of the Government to lay such a matter as this before the legislature for necessary action in xtreme cases. In the present instance, however, the very fact that the Government themselves consider that opinion is still much divided on this difficult question and that the views put forward by them are purely tentative, amounts to a confession of the absence of any emergency. The strong opposition with which the leaders of society and even responsible officers so pronouncedly identify themselves, abundantly shows that there is still a large sufficiency of faith in the beneficence of the existing system. *In such a case of divided opinion, touching communal concerns, I doubt very much whether the Council's interference is not premature and unwarranted.*

Like marriage, the unity of Tarwad estates stands based on long established custom. Judicial authority has emphasized by repeated pronouncements that the constitution of the Tarwad is matriarchal. Property vests in women and acquisitions down to recent times by both Karanavans and Anandaravars used very largely to be made in the name of women. It is supposed, and has been even ruled in some cases, that the suzerainty of the Tarwad vested in the senior female, while the male members acted as ministers, agents and so forth. Our communal usages still carry vestiges and traces of this constitution, I believe, notably in the Royal Family and the Aristocracy. Our estate comprises acquisitions in the name of women, gifts by husbands and fathers, of പരമ്പരാധീനം or gifts on the occasions of Talikettu ceremony, and inam grants by the Sovereign. The last named item is specially designated *kudumba poruthi*, and is a tenure very common in South Travancore. These grants for the maintenance of Tarwads, appear generally to have been made in favour of the female members of the Tarwads.

In the case of the acquisitions in favour of Tarwads, whether in the names of the women, the Karanavan or the junior members, the intention always is that the property should enure to the benefit of all and in perpetuity, or, in the phraseology of documents, അനുഭവത്തിന് സന്തതിപരമ്പരയായി. Even men with modern education and modern ways of thought did not consider it expedient to deviate from this form of investing their earnings. I am not arguing on uncertain data, but can challenge contradiction of my statement. *My premises being correct, I must submit that any provision permitting a partition of Tarwad estates would be an interference with the rights of women and a violation of the intention of innumerable grants, gifts and acquisitions.*

The next point I would ask the Council to consider is whether any necessity has been shown for the partition provision now proposed. The outcry against the multitude of sins on the part of the Karanavan is painfully loud enough; but the necessity for the provision has nowhere been logically established. Individual ownership, as already stated, is an ideal to which society must be converging. The existing system does not interfere with such rights, and, with the rights of full testamentary powers to be conferred by the present Bill, the highest latitude of freedom in the disposition of personal belongings will be reached. *The Legislature is doing for the public what is actually necessary for progress; but, as regards what vests in woman and the sum-total of the acquisitions of those who toiled in the past to perpetuate their Tarwad and to benefit their posterity, I must respectfully assert that no necessity has been proved or established to warrant legislative interference.*

The proposal is to allow partition between Thavazhees of a certain degree of remoteness in relation. Does this cure the evil alleged to exist? The real disease lies in the conflicts of interests between the natural and the artificial relatives of the male members of the Tarwad. When a man marries, whether he is a Karanavan or an Anandaravan, his affection becomes concentrated in his wife and his children, whom I style "artificial relatives" for purposes of argument. The "natural relatives," that is, the members of his Tarwad, lose their original place in his heart, and he lives as a bread-winner, not for his Tarwad, but for his wife and children. The evils resulting from this antagonism are multifold; but how they can be cured by the proposed remedy, transcends my understanding. It is supposed that the present provision is inserting the thin end of the wedge for the introduction of partition as existing under the coparcenary law. *I fear, however, that no practical advantage will be*

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secured by Thavazhee partition. It is the Karanavan that is considered to be the ruinous agent in a Tarwad. The proposed provision only multiplies Karanavans. The conflicts between natural and artificial relationship referred to by me before, would multiply under Thavazhee partition, and the logical consequence must be a multiplication of the mal-feasances etc., which are resorted to to make a decent provision for wife and children to the detriment of the natural relations. Proximity of relationship between the Karanavan and the Anandaravars subject to his rule, does not in real life mitigate the sharpness of the conflict between the two parties, and the advantages to be derived by the proposed enactment are more imaginary than real. This is a fact easily ascertainable. I have, during my 25 years' practice as a lawyer, and in my own personal position, closely come in contact with what harmony is supposed to subsist between Tarwad members of close kinship, and I can assure the Council that the partition between Thavazhees and the creation of Karanavans for each of such new Tarwads would only make matters more confounded and ruinous.

We are already having enough of litigation, and by the enactment of the provision for partition, the legislature would only be shoving us into the fire from the frying pan. *Once the right to sue for partition is recognised, amicable settlements will become few and far between, maintenance allotments will cease to exist, and the characteristic hankering for securing judicial adjudication of even trivial claims, will impel the partition-seeker to get his utmost through the interference of the Courts, at whatever cost and inconvenience.* I submit, Sir, that my fears are not fanciful, but are founded on a close acquaintance with the litigious public of the two Southern Divisions of Travancore.

Apart from the above considerations, I beg to submit, in brief, my further objections to the provision I oppose.

Firstly, the Committee started by summoning only 10 Karanavans against 20 Anandaravars. This step was calculated to handicap the anti-partitionists

Secondly, I am made to understand that many of the witnesses examined did not clearly distinguish between out-right partition and partition for purposes of maintenance. I am informed that several who assented to partition, did not understand that the divided branches would have independent rights of alienation after the partition. I regret I can argue this point with certainty, only if I am put in possession of the evidence.

Thirdly, the most radical advocate of partition must concede that the women of Marumakkathayam Tarwads have joint interests at least, with the male members. This is a principle long recognised and upheld by the Courts; and it follows that the Bill now introduced, which is advanced as warranted by the assent of the majority of the men examined, is, in legal parlance, utterly bad, for want of assent of the female portion of the community. This argument, it might be taken, does not signify much; but, in my humble opinion, the legislature ought not to trample on rights recognised, as well by the judiciary as by time-honoured custom. It might be said that the men's opinion represents the women's. What then is the significance of the practice of the Courts which insists on the jointure of women as parties to perfect representation of Tarwads? The attempt to take the evidence of women, said to have been made by the Committee, was an after-thought at the very fag-end of the inquiry. The very questions framed by the Commission ignored women as a factor to be consulted or even to be dealt with in the matter of property. In such a state of affairs, the women must be treated as not having been consulted at all. The effects of partition must tell directly and most seriously on them. *The marriage-law opens a transition stage to them, and until and unless we can positively gauge the advantages that may accrue to them from the provisions relating to maintenance, inheritance and succession, the partition question must stand in abeyance.*

Fourthly, our wealth is our land, and leaving aside the few that have much and the masses that have little of it, the middle classes come in for special notice. They thrive by joint living and by labour with the few agricultural implements and stock they can jointly command. To them, partition would spell a ruinous dismembermēpt.

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The principle of partition is opposed to the fundamental character of the Marumakkathayam system, and conversion of it into a hybrid form would disturb our economic constitution materially. *Any kind of partition, it seems to me, ought to be thought of, only when the marriage law is made perfect with full rights of inheritance.* Partition in Marumakkathayam Tarwads seems to me a contradiction in terms. The craving is fast on the growth for a change into the Makkathayam system, and, when the legislature find it possible to grant it to the Marumakkathayees generally, or as a permissive law, partition may then come in as a natural and consistent chapter in the law, and not till then, justly, rightly and advantageously.

In this connection, I beg to state that I had sent in a notice of amendment that the Bill be read in Council omitting the Chapter on Partition. I did so, because I thought that any objection to the principle of the Bill should be brought either when permission is sought for to introduce the Bill, or when the principle of it is discussed. As however the President has assured me that, by letting the provision relating to partition stand in the Bill, and approving the principle of the Bill generally subject to the observations I have made, I would not lose the right to discuss the details or to object to the partition-clause either in the Select Committee or in the Council at a subsequent stage, I do not now press my amendment to omit Chapter VII of the Bill.

President.—Gentlemen, it would perhaps enable the public to understand our position better in this matter, if I say a few words on behalf of the Government in regard to this important legislation. You are all aware of the history of the proposed legislation and of the circumstances which led to it. Almost from the inception of the Popular Assembly, the Samantha and Nair Members of the Assembly had been pressing for reform in certain directions in regard to their customary law. This request of theirs was repeated at more than one Assembly. In the Fourth Session of the Assembly, the Government felt that the time had come when the request should be granted, in the sense that an enquiry should be ordered. The Government therefore agreed to appoint a Committee to enquire into the matter, and the precaution was taken to ask the Samantha and Nair Members of the Assembly to elect the three Non-official Members to serve on the Committee. The Members were accordingly elected. The only contribution that the Government made, by way of nomination, to the composition of the Committee, was the appointment of Mr. A. Govinda Pillai, who was then a Judge of the High Court, as the President, and Mr. N. Raman Pillai as the Secretary. This Committee sat, took evidence and submitted their Report. It was felt that the Report should be before the public for a sufficient length of time to enable the communities concerned to understand the Committee's recommendations and make their representations to the Government about them, before the Government proceeded to pass orders on the Report of the Committee. If I remember aright, the Report of the Committee was before the public for nearly two years, and *after* that period, the Committee's Report was taken up and orders were passed. I do not propose to say anything about the nature of the orders passed. Those orders are embodied in the G. O. published in the Gazette. The Government felt that, *having* granted the request of the Assembly to appoint a Committee, and *having* appointed the Committee and received their Report, it was their duty to *deal* with the questions raised and pass orders on the Report. Of course, the Government realised all through, that, in a matter like this, they had to feel their way very carefully, *but it was not possible for us to stop all action*; the information before the Government was that though in regard to details, there was some difference of opinion, there was, a general feeling that legislation *was* necessary in regard to a large number of matters. Since the issue of the G. O., the Seventh Assembly has sat, and that opportunity was taken to invite the opinions of the Samantha and Nair Members of the Assembly upon the Draft Bill appended to the G. O., and such of the Non-official Members of this Council, as were present at the Assembly, know what the Members of the Assembly then said. I mention all these things to show that the Government have been proceeding very cautiously and slowly in the matter, and that there was no intention *at any time* to rush the disposal of the question, which we knew all through was fraught with considerable difficulty. It is a matter of great satisfaction to me, personally, to find that the Bill, as introduced, has, with the exception of the Chapter on Partition, and the definitions of

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Tarwad and Karanavan, received the support of the Non-official Members of the Council, who belong to the community which will be most affected by the Bill. In regard to the subject of partition, I do not propose to say anything now. But I would repeat the assurance I have already given to Mr. Madhavan Tampi, that we do not propose to treat either that, or for the matter of that, any other provision of the Bill, as so vital, that the circumstance that you now accept the general principle of the Bill, would be taken to fetter in any way the discretion, either of the Select Committee or of the Council, to make such alterations as may be needed, or thought to be needed, later on. The opinions of the Samantha and Nair Members of the last Assembly would be communicated to the Select Committee for their consideration, as also the representations about the Bill received from other bodies since the Assembly. *The utmost latitude would be allowed to the Committee as well as to the Council to shape the Bill in its final form in such a way as would make it most useful and least injurious.* I only hope that the efforts we are making, and in which I am glad to see that we have the co-operation of the people most affected, will be crowned with success. With these words, I shall take it that the general principle of the Bill is affirmed, subject to the objection raised by some of you to the Chapter on Partition and to the two definitions, and that you have no objection to the Bill being referred to a Committee.

The Council having then affirmed the principle of the Bill generally, Mr. Ananda Row moved that the Bill be referred to a Select Committee, consisting of Messrs Krishnan Nair, Raman Pillai, Kesava Pillai, Easwara Pillai, Madhavan Tampi and the Mover, to report within three months.

The motion was put and agreed to.

THE HIGH COURT REGULATION AMENDMENT BILL.

Mr. Ananda Row.—Sir, having obtained the permission of the Council at the last meeting to introduce a Bill to amend the High Court Regulation, I beg to introduce the Bill. As explained in the Statement of Objects and Reasons appended to the Draft Bill, the proposal is to invest single Judges of the High Court with some additional powers, and, in doing so, all that has been attempted is to put them on a footing of equality with the powers with which single Judges in the High Courts in British India are invested. No attempt has been made to invest the single Judges of the High Court with any power not possessed by the Judges of the High Courts in British India. Further, the state of work in the High Court is such that, unless the additional powers are given in the matter of the disposal of miscellaneous proceedings, involving no particular principle, it is not likely that the congestion of work will be cured. With these remarks, I beg to move that the principle of the Bill be affirmed.

Seconded by Mr. Vieyra.

Mr. Kesava Pillai.— Sir, I regret I have to oppose the principle of the Bill. Even when permission was sought for to introduce the Bill, I thought that this was a measure in which there would be a difference of opinion. Subsequently, the Vakils' Association have passed a unanimous Resolution that this Bill is not necessary. A measure of this kind is not a matter of much importance as far as the High Court themselves are concerned. The time that will be saved to them is comparatively very little; but I submit that it *is* a matter of some importance, that we should not, in framing a law, do anything which will appear not satisfactory to the Members of the Bar or to the general public. I therefore think that this Bill is not necessary.

Mr. Cameron.— I approve of the principle of the Bill, as it would help to simplify the procedure in the disposal of miscellaneous matters.

Mr. Sri Narayanan Tampi.— I do not approve of the principle of the Bill.

Mr. Easwara Pillai.— I am also of the same opinion.

Mr. Madhavan Tampi.— I am also opposed to the principle of the Bill.

President.— Gentlemen, I do not wish just now to inflict a speech on you, but as one of the reasons mentioned by Mr. Kesava Pillai in opposing the Bill, is the Resolution

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